

12

---

---

**Supreme Court of the United States**

OCTOBER TERM 1941

---

ODELL WALLER,

*Petitioner,*

*against*

RICE M. YOELL, SUPERINTENDENT OF THE STATE  
PENITENTIARY, RICHMOND, VIRGINIA,

*Respondent.*

---

---

**NOTICE OF MOTION FOR LEAVE TO FILE  
ORIGINAL PETITION FOR WRIT OF  
HABEAS CORPUS**

**PETITION FOR WRIT OF HABEAS CORPUS**

---

---

JOHN F. FINERTY,  
MORRIS SHAPIRO,  
*Counsel for Petitioner.*

MARTIN A. MARTIN,  
THOMAS H. STONE,  
*Of Counsel.*

---

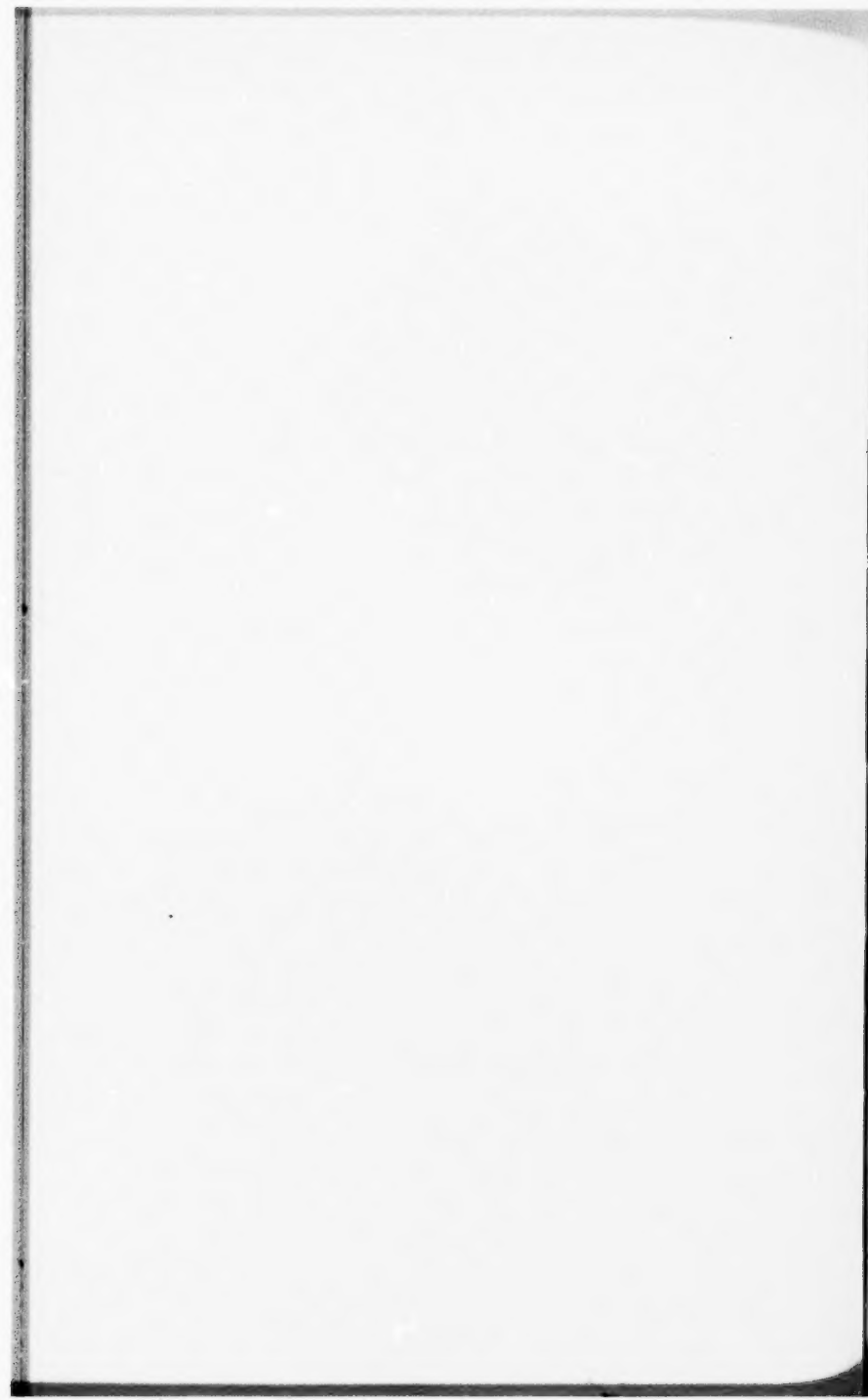
---



## INDEX

---

	PAGE
Motion for Leave to File Petition for an Original Writ of Habeas Corpus .....	1
Petition for Writ of Habeas Corpus .....	3
Exhibit 1 .....	15
Exhibit 2 .....	15
Exhibit 3 .....	16
Exhibit 4 .....	19
Exhibit 5 .....	22
Exhibit 6 .....	24
Exhibit 7 .....	27



# Supreme Court of the United States

OCTOBER TERM 1941

---

ODELL WALLER,

*Petitioner,*

*against*

RICE M. YOEELL, SUPERINTENDENT OF THE STATE  
PENITENTIARY, RICHMOND, VIRGINIA,

*Respondent.*

---

## **Motion for Leave to File Petition for an Original Writ of Habeas Corpus**

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Your petitioner, ODELL WALLER, under sentence to die June 19, 1942, respectfully moves this Court that leave be granted him to file the attached petition for an original writ of habeas corpus.

Your petitioner further respectfully moves this Court that the petition for rehearing heretofore filed in *Waller v. Youell*, No. 1097 of this term, stand as a brief in support of the attached petition for an original writ of habeas corpus.

For the convenience of this Court in passing upon this motion, its attention is respectfully called to the fact that the attached petition for habeas corpus is substantially identical with the petition for habeas corpus heretofore filed with and dismissed by the Supreme Court of Appeals of Virginia, certiorari to review such dismissal having been denied by this Court on May 4th, 1942 by its order in No. 1097. The only changes have been in the following respects:

1. There has been deleted from the petition all allegations with reference to the intent and pattern of the Constitution and laws of Virginia, and only those allegations have been retained which involve the administration in fact of such laws.

2. There has been added:

(a) An allegation, supported by affidavit of petitioner, that he was not asked either by his trial counsel or by the trial court to waive his constitutional rights, and neither intended to, nor did expressly and intelligently consent to waive such rights, but relied on his counsel for adequate protection thereof.

(b) Affidavits of petitioner's trial counsel that they neither intended to waive, nor were they authorized to waive, petitioner's constitutional rights or any jurisdictional questions thereby involved, and at all times intended and endeavored to protect such rights and questions.

(c) Affidavit of Eleanor Bontecou, based on a survey of the poll tax states conducted under the auspices of the William C. Whitney Fund, and the New School for Social Research to determine the effect of poll taxes upon the exercise of the rights of franchise and jury service, with particular reference to the economic disabilities preventing payment of poll taxes by sharecroppers and Negroes.

ODELL WALLER,  
*Petitioner.*

By JOHN F. FINERTY,  
MORRIS SHAPIRO,  
*Counsel for Petitioner.*

MARTIN A. MARTIN,  
THOMAS H. STONE,  
*Of Counsel.*

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

---

ODELL WALLER,*Petitioner,**against*RICE M. YOELL, SUPERINTENDENT OF THE STATE  
PENITENTIARY, RICHMOND, VIRGINIA,*Respondent.*

---

**Petition for Writ of Habeas Corpus***To the Honorable the Supreme Court of the United States:*

The petition of ODELL WALLER respectfully shows:

1. Petitioner is a citizen of the United States and of the State of Virginia, and, prior to his detention, was a resident of Pittsylvania County, Virginia.

2. Petitioner is now unjustly and unlawfully imprisoned and restrained of his liberty and detained under sentence of death in the custody of Rice M. Youell, Superintendent of the State Penitentiary, Richmond, Virginia.

3. The sole color of authority by which said Rice M. Youell, Superintendent of said penitentiary, so restrains and detains petitioner is a commitment of the Circuit Court of Pittsylvania County, Virginia.

4. Petitioner alleges that said commitment and the proceedings upon which it is based are wholly null and void and without authority in law, and are violative of the

Constitution of the United States, in the following respects and by reason of the following facts:

I.

Said commitment is based upon:

1. An indictment by a special grand jury of said Pittsylvania County, charging petitioner with the murder in the first degree in said county on July 15, 1940 of one Oscar Davis.

2. Petitioner's plea of not guilty to such indictment.

3. A trial before the Circuit Court of said county and a petit jury thereof.

4. A verdict against petitioner by said jury of murder in the first degree and fixing petitioner's punishment at death.

5. Sentence by said Court on such verdict that petitioner be, on December 27, 1940, electrocuted until dead, and commitment of petitioner to the State Penitentiary at Richmond, Virginia, pending his execution.

6. On March 4, 1941, the Supreme Court of Appeals of Virginia granted a writ of error and supersedeas to review said judgment and sentence of the Circuit Court of Pittsylvania County.

7. On October 13, 1941, the Supreme Court of Appeals of Virginia affirmed the judgment and sentence of said Circuit Court.

A copy of the record before said Court on writ of error is attached to petition for certiorari heretofore filed in

this Honorable Court at the October 1941 term No. 1097 made part of this petition, marked Exhibit 1.\* Said record contains a copy of said indictment (R. 31-32), a statement of petitioner's plea of not guilty (R. 23), a transcript of the evidence upon trial of petitioner before said Circuit Court (R. 85-127), the verdict of the jury and judgment of the Court, and commitment (R. 23-24).

8. On November 3, 1941, said Court resentenced petitioner to be electrocuted until dead on December 12, 1941. A copy of the order of said Court so resentencing petitioner is attached hereto and made part hereof marked Exhibit 2. That the Governor of the State of Virginia granted a stay of execution from December 9, 1941 to March 20, 1942 in order to permit the petitioner to apply to the Supreme Court of Appeals of Virginia for a writ of habeas corpus.

9. A petition for writ of habeas corpus was heretofore submitted to the Supreme Court of Appeals of the State of Virginia, which said Court, on January 22, 1942, issued its order dismissing the said petition. That the Governor of the State of Virginia granted a further stay of execution to May 19, 1942 in order to permit the petitioner to apply to this Court for certiorari.

10. A petition to this Court for certiorari to review the dismissal of the petition for writ of habeas corpus by the Supreme Court of Appeals of the State of Virginia was denied by order entered on May 4, 1942. That the Governor of the State of Virginia granted a further stay of execution to June 19, 1942 in order to permit the petitioner to file in this Court a petition for rehearing, and this petition for an original writ of habeas corpus.

---

\* The record of petitioner's trial before the Circuit Court of Pittsylvania County is not reprinted here for the reason that such cost is beyond petitioner's means, and the funds available for these proceedings contributed by interested citizens, are inadequate to meet such additional costs.

11. A petition for rehearing of the order denying certiorari is being filed in this Court on May 25, 1942, and this petition is contingent upon action to be taken by the Court thereon.

## II.

The record before the Supreme Court of Appeals of Virginia on petitioner's writ of error shows the following:

1. That upon petitioner's case being called for trial in the Circuit Court of Pittsylvania County, petitioner, by his attorneys, moved the Court to quash the indictment

"on the ground that said indictment had been returned by a grand jury selected from the poll Taxpayers of Pittsylvania County and that such mode of selection deprived the accused of his right to a trial by a jury of his peers and denied him due process of law and equal protection of the laws in contravention of the 8th Section of the Virginia Bill of Rights and the 14th Amendment to the Constitution of the United States" (R. 31).\*

The record then shows that no evidence was offered to support such motion, that the motion was overruled by the Court, and that petitioner's counsel duly excepted (R. 31).

2. That thereupon, petitioner, by his counsel

"moved the Court to quash the venire facias on the ground that said venire facias had been selected from a list of poll taxpayers of the County of Pittsylvania and that such manner of selection denied him his right to a trial by jury of his peers and deprived him of due process of law and equal protection of the laws, in contravention of the 8th Section of the Virginia Bill of Right(s) and the 14th Amendment to the Constitution of the United States" (R. 32).

---

\* Record references in this petition are as previously stated to Record before this Court on certiorari in No. 1097, October 10, 1941.

The record further shows that no evidence was offered in support of this motion, that the motion was overruled by the Court, and that petitioner's counsel duly excepted (R. 32).

3. That although said motions to quash the indictment and the venire facias were made upon the ground that the grand jury indicting petitioner and the venire facias from which was drawn the petit jury trying him were selected from poll tax payers of Pittsylvania County, nevertheless, the Supreme Court of Appeals of Virginia, upon writ of error from the judgment of conviction, specifically construed such motions as based on the systematic exclusion of non-poll tax payers. *Waller v. Commonwealth*, 178 Va. 294.

4. Thus, upon the calling of his cause for trial in the Circuit Court of Pittsylvania County, and before such trial was entered upon, petitioner's counsel seasonably moved to quash the indictment and to quash the venire facias upon the ground that persons unable to pay their poll taxes were systematically excluded from grand and petit juries in such County, and had been so excluded from the grand jury indicting petitioner, and from the venire facias from which was drawn the jury before whom petitioner was subsequently tried.

5. That, at the time the foregoing motions were made, petitioner's counsel specifically stated that petitioner was of the same general social and economic category as those persons so barred from grand and petit jury service because unable to pay their poll taxes but no evidence was offered in support of this statement (R. 18-19, Exhibit 1, p. 60).

6. That petitioner's counsel in support of such motions, did not offer evidence of such systematic exclusion, being

then of the opinion as shown by their statements of record before the said Circuit Court of Pittsylvania County, and by their affidavits hereto annexed as Exhibits 3 and 4 that the Constitution and statutes of Virginia made the payment of poll taxes a prerequisite to both grand and petit jury service, and while the question had never been expressly decided by the Supreme Court of Appeals of Virginia, counsel believed, as likewise shown by their statements of record to the said Court that their construction of the law was sustained by the decision in *Craft v. Commonwealth*, 65 Va. 602.

7. That in failing to offer evidence of such actual exclusion, counsel did not intend to waive the constitutional and jurisdictional questions thereby presented, and were neither asked nor authorized by petitioner to make such waiver; on the contrary, as shown by the petition for writ of error to the Supreme Court of Appeals of Virginia, counsel continued to be of the foregoing opinion as to the law of the State of Virginia, and urged it upon the said Court until, in affirming petitioner's conviction, that Court for the first time expressly held to the contrary.

8. That petitioner's counsel failed to make such proof of exclusion before the Circuit Court of Pittsylvania County due to a bona fide misapprehension as to the law of the State of Virginia and a bona fide mistake therefore as to the procedure necessary to establish the jurisdictional and constitutional questions there raised on behalf of your petitioner.

### III.

1. Petitioner alleges that, on the record before the Supreme Court of Appeals of Virginia upon petitioner's writ of error, no question therefore was presented to said Court as to whether non-payers of poll tax were in fact

systematically barred from grand and petit jury service in Pittsylvania County, or were in fact so barred from the grand jury indicting petitioner, or from the petit jury trying petitioner, or from the venire facias or petit jury list from which such petit jury was drawn.

2. Petitioner further alleges that the opinion of said Court on the writ of error affirming petitioner's conviction, consequently did not pass on the question whether non-payers of poll tax were barred in fact from jury service in the respects alleged in the preceding paragraph, but held merely that, under the Constitution and laws of Virginia, non-payers of poll tax were not barred in law from either grand or petit jury service. *Waller v. Commonwealth, supra.*

3. Said opinion further shows that said Court held that, on the record before it upon such writ of error, there was no evidence that petitioner had or had not paid a poll tax, and that, therefore, petitioner was in no position to complain of any discrimination, had any discrimination existed. *Waller v. Commonwealth, supra.*

#### IV.

That petitioner has exhausted all remedies available to him in the courts of the State of Virginia, first, by application to the Supreme Court of Appeals of that State for a writ of error to review petitioner's judgment of conviction and second, by application to that Court for a writ of habeas corpus following affirmance of petitioner's conviction upon such writ of error. That application to this Court for certiorari to review the affirmance of petitioner's conviction upon writ of error to the Supreme Court of Virginia would have been useless, since the facts of exclusion, constituting denial of petitioner's constitutional rights, did not appear of record upon such writ of

error to the Supreme Court of Appeals of Virginia and, therefore, would not have appeared of record upon petition for certiorari to this Court.

## V.

Petitioner alleges that he is a negro and that at the time of his trial he was twenty-three years of age, and had been for several years preceding, a sharecropper; that, as such, his economic circumstances prevented him from paying a poll tax, and that he had not in fact at any time paid a poll tax and at all times was unable to do so. Petitioner's affidavit in this respect is attached to and made part of this petition, marked Exhibit 5.

## VI.

1. Petitioner alleges that persons otherwise eligible for grand and petit jury service under the laws of Virginia, who have not paid poll taxes, are, in fact, systematically barred in Pittsylvania County, Virginia, from serving either as grand or petit jurors, and were, in fact, so barred from the grand jury indicting petitioner and from the petit jury before which petitioner was tried.

2. Petitioner alleges that, of the seven persons serving on the special grand jury by which petitioner was indicted, all had paid poll taxes, and all except one had paid poll taxes for the years 1938, 1939 and 1940, which such one, though apparently in default in his poll taxes for said years, had paid poll taxes for the year 1937.

3. Petitioner alleges that all persons on the petit jury before whom defendant was tried and all persons upon the venire facias from which said petit jury was drawn, had paid their poll taxes in full for the years 1938, 1939 and 1940.

4. Petitioner further alleges that the persons summoned by said venire facias/were taken from a jury list compiled by the jury commissioners of Pittsylvania County in purported compliance with Section 4895 of the Code of Virginia; that said jury list contained the name of no person who had not paid a poll tax; that all names appearing on said jury list were names of persons appearing on the poll tax list of Pittsylvania County and no others; that said poll tax list contained the names of all persons who had paid poll tax for the year 1940 and within a period of two years preceding 1940, and of no other persons; that such poll tax lists were the exclusive source from which said jury commissioners drew the names appearing on said jury list; and that jury lists in Pittsylvania County are habitually so compiled, and thereby non-payers of poll taxes are habitually and systematically excluded from juries in said County.

Petitioner further alleges that, for the purpose of obtaining like information as to the jury list of Pittsylvania County for 1939, counsel for petitioner attempted to examine the list compiled by the jury commissioners of Pittsylvania County for said year, which, petitioner is informed and believes, is in the custody of the Clerk of the Circuit Court of Pittsylvania County; that said Clerk refused counsel access to such jury list, stating that he so refused by direction of the judge of said Circuit Court, the Honorable J. T. Clement.

5. The affidavit of Martin A. Martin, setting forth the facts alleged in this section of the petition, is attached to and made a part hereof marked Exhibit 6.

## VII.

1. Petitioner alleges that the Constitution and laws of Virginia, although construed by the Supreme Court of Appeals of that State not in law to require such exclusion,

have been administered in fact to exclude systematically from service as grand and petit jurors, a numerous and wide-spread class of citizens otherwise qualified, who, because of the disabilities common to the economic status of their class, have been unable to and have not paid poll taxes as required by such Constitution and laws.

2. Petitioner alleges that, while negroes and share-croppers are not, as such, so barred from service as grand and petit jurors, they, because of their similar economic status, constitute a large proportion of the class of persons so barred as grand and petit jurors, and that petitioner himself is of such economic class so barred.

3. Petitioner alleges that such economic class who are unable and do not pay poll taxes and who are thereby barred from serving as grand and petit jurors, is so numerous and widespread that, in Pittsylvania County, Virginia, with a population for the year 1940 of approximately 30,000 persons over 20 years of age, only approximately 6,000 were able to pay and did pay their poll taxes, and were thereby eligible in law to vote, and in fact to serve as grand and petit jurors. That of the remaining 24,000 persons, non-payment of poll taxes was due principally and primarily to the economic status of such persons.

4. See affidavit of Martin A. Martin, setting forth the facts alleged in this section of the petition, attached to and made part hereof marked Exhibit 6. (See also affidavit of Eleanor Bontecou, attached to and made part of this petition marked Exhibit 7.)

## VIII.

Petitioner alleges that, by reason of all the foregoing facts and circumstances, petitioner's commitment and the proceedings upon which it is based are wholly null and

void and without authority in law, and are violative of the Constitution of the United States in the following respects:

1. In violation of the Fourteenth Amendment of the Constitution of the United States in that petitioner has been deprived of his liberty, and would be deprived of his life, without due process of law and without equal protection of the laws in the following respects:

(a) By reason of the fact that there were unlawfully and systematically excluded from the grand jury indicting petitioner a numerous and widespread class of citizens of Virginia and residents of Pittsylvania County, otherwise qualified, solely because of their non-payment of poll taxes, such non-payment arising out of the disabilities common to the economic status of their class, of which class petitioner is one.

(b) By reason of the fact that there were unlawfully and systematically excluded from the petit jury trying petitioner a numerous and widespread class of citizens of Virginia and residents of Pittsylvania County, otherwise qualified, solely because of their non-payment of poll taxes, such non-payment arising out of the disabilities common to the economic status of their class, of which class petitioner is one.

WHEREFORE, by reason of the foregoing allegations, your petitioner prays that a writ of habeas corpus issue from this Honorable Court, to be directed to Rice M. Youell, Superintendent of the State Penitentiary, Richmond, Virginia, aforesaid, and whomever may hold your petitioner in custody, commanding him and them to have the body of your petitioner before this Honorable Court on a date to be fixed by said Court, for the purpose of inquiring into the cause of the commitment and detention of your

petitioner, and to do and abide such order as this Court may make in the premises.

Your petitioner further prays this Court that there-upon your petitioner should be granted a discharge from such custody.

ODELL WALLER,  
*Petitioner.*

By JOHN F. FINERTY,  
MORRIS SHAPIRO,  
*Counsel for Petitioner.*

MARTIN A. MARTIN,  
THOMAS H. STONE,  
*Of Counsel.*

**Exhibit 1.**

(Refer to footnote on page 5.)

---

**Exhibit 2.**

VIRGINIA:

IN THE SUPREME COURT OF APPEALS HELD AT THE COURT  
LIBRARY BUILDING IN THE CITY OF RICHMOND ON  
THURSDAY THE 22ND DAY OF JANUARY, 1942.

This day came Odell Waller, by counsel, and presented to the court his petition that a writ of habeas corpus issue directed to Rice M. Youell, Superintendent of the State Penitentiary, and whomever may hold said petitioner in custody, commanding him and them to have the body of petitioner before this court for the purpose of inquiring into the cause of the commitment and detention of said petitioner, with which petition were filed certain exhibits, to-wit: the record of the trial and conviction of petitioner in the Circuit Court of Pittsylvania county, the judgment in which was affirmed by this court on the 13th day of October, 1941; copy of order of the Circuit Court of Pittsylvania county, dated the 11th day of November, 1941, resentencing the petitioner; affidavit of petitioner dated the 3rd day of December, 1941; and affidavit of Martin A. Martin, dated the 3rd day of December, 1941; and the court having maturely considered the said petition and exhibits therewith, is of opinion that the said writ of habeas corpus should not issue as prayed. It is therefore considered that the said petition be dismissed.

A copy, Teste:

(Signed) M. B. Watts Clerk

**Exhibit 3.**

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

---

 ODELL WALLER,

Petitioner,

*against*
 RICE M. YOEUELL, SUPERINTENDENT OF THE STATE  
 PENITENTIARY, RICHMOND, VIRGINIA,

Respondent.

---

 STATE OF VIRGINIA    }  
 CITY OF RICHMOND    } ss.:

THOMAS H. STONE, being duly sworn, deposes and says:

That your deponent is an attorney-at-law, duly licensed to practice in the State of Virginia and that he maintains an office and resides at Richmond, Virginia.

That your deponent has read the annexed petition and affidavit of Odell Waller and verily believes the same to be true and correct in all respects.

That your deponent, together with J. Byron Hopkins, Esq., also an attorney duly admitted to practice in the State of Virginia, acted as counsel for said Odell Waller at the time of his indictment and trial in the Circuit Court of Pittsylvania County, State of Virginia.

That, upon calling of the cause for trial and before such trial was entered upon, such counsel seasonably moved to quash the indictment and to quash the venire facias upon

*Exhibit 3.*

the grounds that persons unable to pay their poll taxes were systematically excluded from grand and petit juries in such county, and had been so excluded from the grand jury indicting petitioner, and from the venire facias from which was drawn the jury before whom the petitioner was subsequently tried; that petitioner himself was of the same general social and economic category as those excluded and similarly unable to pay his poll taxes; that thereby petitioner would be denied equal protection of the law and due process of law, in violation of the 14th Amendment to the Constitution of the United States.

That counsel, however, in support of such motions, did not offer evidence of such systematic exclusion, being then of the opinion, as shown by their statements of record before said Court, that the Constitution and statutes of Virginia made the payment of poll taxes a prerequisite to both grand and petit jury service; that, while the question had never been expressly decided by the Supreme Court of Appeals of Virginia, counsel believed, as likewise shown by their statements of record to said Court, that their construction of the law was sustained by the decision in *Craft v. Commonwealth*, 65 Va. 602.

That, neither in failing to offer evidence of such actual exclusion nor otherwise, did counsel intend to waive the constitutional and jurisdictional questions thereby presented, and were neither asked nor were authorized by said Waller to make such waiver.

That, on the contrary, as shown by the petition for writ of error to the Supreme Court of Appeals of Virginia, counsel continued to be of the foregoing opinion as to the law of Virginia, and urged it upon said Court, until, in affirming petitioner's conviction, that Court expressly and, for the first time, held to the contrary.

*Exhibit 3.*

That, therefore, counsel failed to make such proof of exclusion before the Circuit Court of Pittsylvania County, due to a bona fide mistake as to the law of Virginia and to a bona fide mistake as to the procedure necessary to establish the constitutional and jurisdictional questions there raised on behalf of petitioner.

THOMAS H. STONE

Sworn to before me this  
22nd day of May, 1942.

V. M. STERLING, Notary Public.  
My Commission expires  
January 21, 1945

(Seal)

**Exhibit 4.**

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

ODELL WALLER,

Petitioner,

*against*RICE M. YOEELL, SUPERINTENDENT OF THE STATE  
PENITENTIARY, RICHMOND, VIRGINIA,

Respondent.

STATE OF VIRGINIA      }  
COUNTY OF HENRICO    } ss.:

J. BYRON HOPKINS, being duly sworn, deposes and says:

That your deponent is an attorney-at-law, duly licensed to practice in the State of Virginia and that he maintains an office and resides at Richmond, Virginia.

That your deponent has read the annexed petition and affidavit of Odell Waller and verily believes the same to be true and correct in all respects.

That your deponent, together with Thomas H. Stone, Esq., also an attorney duly admitted to practice in the State of Virginia, acted as counsel for said Odell Waller at the time of his indictment and trial in the Circuit Court of Pittsylvania County, State of Virginia.

That, upon calling of the cause for trial and before such trial was entered upon, such counsel seasonably moved to quash the indictment and to quash the venire facias upon

*Exhibit 4.*

the grounds that persons unable to pay their poll taxes were systematically excluded from grand and petit juries in such county, and had been so excluded from the grand jury indicting petitioner, and from the venire facias from which was drawn the jury before whom the petitioner was subsequently tried; that petitioner himself was of the same general social and economic category as those excluded and similarly unable to pay his poll taxes; that thereby Waller would be denied equal protection of the law and due process of law, in violation of the 14th Amendment to the Constitution of the United States.

That counsel, however, in support of such motions, did not offer evidence of such systematic exclusion, being then of the opinion, as shown by their statements of record before said Court, that the Constitution and Statutes of Virginia made the payment of poll taxes a prerequisite to both grand and petit jury service; that, while the question had never been expressly decided by the Supreme Court of Appeals of Virginia, counsel believed, as likewise shown by their statement of record to said Court, that their construction of the law was sustained by the decision in *Craft v. Commonwealth*, 65 Va. 602.

That, neither in failing to offer evidence of such actual exclusion or otherwise, did counsel intend to waive the constitutional and jurisdictional questions thereby presented and were neither asked nor were authorized by said Waller to make such waiver.

That, on the contrary, as shown by the petition for writ of error to the Supreme Court of Appeals of Virginia, counsel continued to be of the foregoing opinion as to the law of Virginia, and urged it upon said Court, until, in affirming petitioner's conviction, that Court expressly and, for the first time, held to the contrary.

*Exhibit 4.*

That, therefore, counsel failed to make such proof of exclusion before the Circuit Court of Pittsylvania County, due to a bona fide mistake as to the law of Virginia and to a bona fide mistake as to the procedure necessary to establish the constitutional and jurisdictional questions there raised on behalf of petitioner.

J. BYRON HOPKINS

Sworn to before me this  
22nd day of May, 1942.

B. A. CEPNAS, Notary Public.  
My Commission expires August 7, 1943

(Seal)

**Exhibit 5.**

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

---

 ODELL WALLER,

Petitioner,

*against*
 RICE M. YOELL, SUPERINTENDENT OF THE STATE  
 PENITENTIARY, RICHMOND, VIRGINIA,

Respondent.

---

 STATE OF VIRGINIA      }  
 COUNTY OF HENRICO    } ss.:

ODELL WALLER, being duly sworn, deposes and says as follows:

That he is a citizen of the United States and of the State of Virginia, and prior to his detention, was a resident of Pittsylvania County, State of Virginia. That your deponent is now imprisoned and detained under sentence of death, in the custody of RICE M. YOELL, Superintendent of the State Penitentiary, Richmond, Virginia. That your deponent is a Negro. That prior to his detention, his occupation was that of a sharecropper. That at the time of his indictment and trial, your deponent was upwards of twenty-three years of age. That your deponent has not now or at any time heretofore, paid his poll taxes, and has been unable so to do by reason of his economic status.

*Exhibit 5.*

That, at the time petitioner's counsel moved before the Circuit Court of Pittsylvania County to quash petitioner's indictment and to quash the venire facias from which was drawn the jury before whom deponent was subsequently tried, deponent was not asked either by his counsel or by the Court to waive the constitutional and jurisdictional questions presented by such motions, nor did he authorize such waiver, nor intend that any such waiver should be made, but, at all times, desired and intended that all of his constitutional rights should be fully protected, including any jurisdictional questions thereby involved.

ODELL WALLER

Sworn to before me this  
22nd day of May, 1942.

WILLIAM J. BRYAN

Notary Public,

City of Richmond, Va.

My Commission expires Oct. 25, 1942.

(Seal)

**Exhibit 6.**

IN THE  
SUPREME COURT OF APPEALS OF VIRGINIA

---

ODELL WALLER,

Petitioner,

*against*

RICE M. YOELL, SUPERINTENDENT OF THE STATE  
PENITENTIARY, RICHMOND, VIRGINIA,

Respondent.

---

STATE OF VIRGINIA      }  
COUNTY OF HENRICO    } ss. :

MARTIN A. MARTIN, being duly sworn, deposes and says as follows:

That your deponent is an attorney at law, duly licensed to practice in the State of Virginia, and maintains an office and resides at Danville, Virginia. That your deponent has read the annexed petition of ODELL WALLER, and verily believes the same to be true and correct in all respects.

That your deponent examined the records in the office of the Clerk of the Circuit Court of Pittsylvania County, with respect to the payment of poll taxes by the grand and petit jurors who indicted and tried the petitioner herein. That such examination disclosed that of the seven persons serving on the special grand jury by which petitioner was indicted, all had paid poll taxes, and all except one had paid poll taxes for the years 1938, 1939 and 1940, while such one, though apparently in default for his poll

*Exhibit 6.*

taxes for said years, had paid his poll tax for the year 1937. That such examination further disclosed that all persons on the petit jury before whom the defendant was tried, and all persons upon the venire facias from which the said petit jury was drawn, had paid their poll taxes in full for the years 1938, 1939 and 1940. That the persons summoned upon the said venire facias were taken from a jury list compiled by the Jury Commissioners of Pittsylvania County; that said jury list contained the name of no person who had not paid a poll tax; that all names appearing on said jury list were names of persons appearing on the poll tax list of Pittsylvania County, and no others; that the said poll tax list contained the names of all persons who had paid poll tax for the year 1940, and within a period of two years preceding, and no other persons; and upon information and belief that such poll tax list was the exclusive source from which the said Jury Commissioners drew the names appearing on said jury list, and such jury lists in Pittsylvania County are habitually and regularly so compiled.

That for the purpose of obtaining like information as to the jury list of Pittsylvania County for the year 1939, your deponent attempted to examine the list compiled by the Jury Commissioners of the said County, which deponent is informed and verily believes is in the custody of the Clerk of the Circuit Court of Pittsylvania County; that said Clerk refused your deponent access to such jury list, stating that he so refused by direction of the Judge of said Circuit Court, the Honorable J. T. Clement.

That your deponent further examined the records in the office of the Treasurer of Virginia and in the branch office of the United States Bureau of Census at Richmond, Virginia, and ascertained therefrom that in Pittsylvania

*Exhibit 6.*

County, with a population for the year 1940 of 28,989 persons over twenty years of age, only 5,929 persons were able to and did pay their poll taxes and were thereby eligible in law to vote.

MARTIN A. MARTIN

Sworn to before me this  
22nd day of May, 1942.

B. A. CEPNAS, Notary Public.  
My Commission expires August 7, 1943

(Seal)

**Exhibit 7.**

City of Washington }  
 District of Columbia } ss.:

ELEANOR BONTECOU, being duly sworn, deposes and says:

That for the past two years she has been engaged in a study of the operation of the suffrage laws in the Southern states. This research was financed by the William C. Whitney Fund and conducted under the auspices of the New School for Social Research of New York City. The field work in this study was planned and carried on in co-operation with the Carnegie Foundation which was conducting a study of the Negro in America.

Particular attention was paid to the operation of the poll tax laws in the eight states where the tax is made a prerequisite to the right to vote. Statistics show that in poll tax states only about 20 per cent of the adult population vote, as against about 70 per cent in adjoining non-poll tax states. In this connection all available written data was consulted relating to wages and income of share-croppers and agricultural laborers in those states in order to determine the extent to which the poll tax operates as an economic as well as a political burden upon these groups. The field worker for the study, who travelled for six months in the poll tax states was also requested to collect all possible data as to current rates of wages and income levels in the counties visited. To this end he interrogated county officials and local representatives of the Federal Department of Agriculture and of the Works Progress Administration, and also questioned members of the groups, selected at random.

Deponent further states that in the present affidavit she relies principally upon the following for the statistical data presented: The United States Census of Population of 1930, the United States Census of Agriculture for 1935, the reports of the National Resources Committee of the

*Exhibit 7.*

Federal Government on Consumer Incomes in the United States, and Consumer Expenditures in the United States, and the testimony submitted by the United States Department of Agriculture to the Senate Committee on Education and Labor at Washington, in May 1940. No other statistical reports have been found which contradict or radically differ from the above.

Deponent further states the following, upon information and belief:

All statistical studies reveal that income in the poll tax states, whether measured by per capita or family receipts, is far below the average for the United States. Further analysis of the more general studies indicates that these low income averages are due in large part to the extreme poverty of certain groups who constitute a large part of the population in these states; that is, the share-croppers and agricultural laborers.

In the South white families with less than \$750 annual income and Negro families with less than \$500 annually have usually had to spend more than their incomes upon the necessities of living. 47.5% of all farm families in the South and 53.1% of all Negro families in Southern rural communities have received less annual income than the amount found to be required for solvency.

The range of income of share-croppers and agricultural wage laborers is as follows:

Share-croppers received in the years 1932 to 1937 inclusive from \$193 income annually to \$608. This high figure was received in only one area, the South Carolina coastal Plain. Cash income for this group varied in the same period from \$119 annually for each family to \$367.

Wage laborers in the same areas in those years received family income of from \$193 to \$405 annually. Cash income for this group was from \$126 to \$292 a family.

*Exhibit 7.*

In 1935 there were at least 1,035,921 share-croppers and agricultural wage laborers in the poll tax states. In many of the counties where the plantation system still prevails these groups constitute a large majority of the population. The large majority of negroes are unable to pay poll taxes, and a large proportion of non-poll tax payers are negroes.

The reports of the field worker referred to above corroborated and supplemented the generalities of statistical data. In many of the counties visited agricultural wages were found to be from 50 to 75 cents a day for a ten hour day. Work was not available at all times of the year. In a number of the counties the number of families receiving an income of less than \$400 a year was reported to be from 1000 to 3000. Examination of voters lists and other county records showed that very few share-croppers or wage laborers had in fact paid the poll tax, and interviews with individuals confirmed the statistical data which indicated that in many cases such payment was a financial impossibility or could be made only by the sacrifice of some need of decent living. Where the poll tax was cumulative many of the members of these groups found themselves permanently barred not only from voting but from participation in local government, including the right to serve on juries, since either by statute or administrative practice poll tax payment is made the prerequisite to participation in these activities.

ELEANOR BONTECOU

Subscribed and sworn to before me at  
Washington, D. C., on May 21st, 1942.

GEO. B. EARNSHAW

Notary Public, D. C.

My Commission Expires Sept. 17, 1943.

(Seal)